



XII-188(Dail)
C. J. P. R.-2000 6-88

CA 1105-102 (2)

APPEAL OF PRISONER

Division Bench (Criminal)

No. 5718 Name जगदीश
Father's name बन्हा साहू, निवासी ग्राम-बंरतोरा, थाना-पलारी, जिला-रायपुर (मध्य)
Residence जिला रायपुर (मध्य) Age 45 वर्ष (पुरुष)
Sentenced आमन्त्र-करोवासा on 22.9.1992
Under section 302, I.P.C. by न्यायालय-अतिरिक्त सत्र न्यायाधीश खलौदा, जिला-रायपुर (मध्य) डायरी-53/92

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

- 1 Date of Application for copy of Judgement 22.9.1992
- 2 Date of which copy received 15.10.1992
- 3 Date on which Appeal sent 15.10.1992
- 4 whether the prisoner wishes to be represented or not - Yes / No

No. 5718 Name जगदीश बन्हा साहू
Continued in CENTRAL Jail RAIPUR (M.P.)
No. 336 / Octagon Dated 22.10.1992
Forward to the CHIEF JUDICIAL MAGISTRATE अतिरिक्त फौजियक महोदय
to gather which a copy of order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent

Date of receipt in C. J. M.'s office
Date of receipt record to accompany
Memo of Appeal of the Appellate court

No. 1 Dated 1992
Forwarded to the C. J. Magistrate
Date of receipt in Appellate Court 422 Rk
(P. T. O.)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 1105 OF 1992

Jagdish

Vs.

State of Madhya Pradesh
(now Chhattisgarh)

J U D G M E N T

For Consideration

Sd/-
Fakhruddin
Judge
21-12-05

Hon'ble Shri Justice V.K. Shrivastava

aggr

Sd/-
V.K. Shrivastava
Judge

Judgment post for 21-12-2005

Sd/-
Fakhruddin
Judge

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 1105 OF 1992

Jagdish

Vs.

State of Madhya Pradesh
(now Chhattisgarh)

**Coram :- Hon'ble Shri Fakhruddin, J &
Hon'ble Shri V.K. Shrivastava, J**

Shri V.C. Ottalwar, Advocate appears as Amicus Curiae on behalf of the appellant.

Shri Ravindra Agrawal, Panel Lawyer for the State.

J U D G M E N T

Per Fakhruddin, J

Heard learned counsel for the parties.

2. This appeal is directed against the judgment dated 22-9-1992 delivered in Sessions Trial No.53/92 by the Additional Sessions Judge, Balodabazar, whereby the appellant has been convicted under Section 302 of the Indian Penal Code for committing murder of his wife Bhoja Bai and sentenced to undergo imprisonment for life.

3. The facts, which are not disputed, are that deceased Bhoja Bai was the wife of the appellant-accused. One Savitri Bai was wife of Mahadev (son of the appellant). After marriage Savitri was living with Mahadev in the house. The accused had an evil eye on Savitri and at some point of time he tried to advance towards her, which was not liked by deceased Bhoja Bai. Panchayat has also taken place, thereafter divorce took place between Savitri and Mahadev. Mahadev married with another lady Shanti Bai.

4. On 3-9-1991 at 8.00 a.m., appellant with his wife Bhoja Bai and son Milaram went to his field for agricultural work i.e. weeding. Appellant, Bhoja Bai and Milaram were in field till 11.00⁰ a.m. Milaram was sent by appellant to his house and asked him to prepare the food. At that time, accused and his wife Bhoja Bai were in the field. Thereafter at 1.30 P.M. Jagdish went to his brother's house namely Ramnath and asked for money from Phoolkunwar, the daughter of Ramnath. Phoolkunwar gave him Rs. 50/- then Jagdish went. According to the prosecution, when the appellant and Bhoja Bai did not return, Milaram went to the field at 1.30 p.m. He did not find his father whereas he found that his mother was lying dead in the field and her neck was tied from the Saree which she was wearing. Seeing this, Milaram returned to the locality and narrated about this to the villagers. By that time, message was sent to Mahadev (P.W.1). First Information Report (Ex.P/1) was lodged by Mahadev, describing these events and it was mentioned therein that his father was missing. It was further reported that the deceased and appellant were together in the field. It was also reported that it is the appellant who has killed the deceased. On report being lodged, the crime was registered and the investigation was made. The dead body was sent for post mortem which was conducted by Dr. G.R. Agrawal (PW-11). The post mortem report is Ex.P/7, which describes the following injuries on the body of the deceased:

- 1) Aberration present over left hand on anterior aspect size 1 cm. x $\frac{1}{2}$ cm.
- 2) Aberration over chest on left side 8 cm. below nipple size $\frac{1}{2}$ cm. x $\frac{1}{2}$ cm.
- 3) Contusion over left auricle over ear lobule size $1\frac{1}{2}$ cm. x $\frac{1}{2}$ cm.

- 4) Multiple aberration of different size and shape present over cubital fossa (Right side).
- 5) Contusion size 3 cm. x 1 cm. over right wrist-anterior aspect.

The Doctor opined that cause of death was due to strangulation and homicidal in nature.

5. The prosecution filed challan and the case was committed to the Sessions Court. On being charged for the offence of murder, the appellant abjured the guilt and contended that he has been falsely implicated. The prosecution examined 14 witnesses. P.W.1 Mahadev, P.W.2 Milaram, P.W.3 Bishatram Verma, P.W.4 Gambirdas, P.W.5 Kejuram, P.W.6 B.P. Agnihotri (A.S.I.), P.W.7 Gambir Das, P.W.8 Phool Kunwar, P.W.9 Nirmala Bai, P.W.10 Rishi Kumar, P.W.11 Dr. G.R. Agrawal, P.W.12 Savitri Bai, P.W.13 Kartik Ram and P.W.14 L.K. Pandey (I.O.). The Court below relied on the prosecution evidence and convicted the accused/appellant & sentenced him as mentioned above.

6. Shri Ottalwar appearing on behalf of the appellant contended that there is no eyewitness and the case rests on circumstantial evidence and the chain of the circumstance has not been proved. He also contended that according to the prosecution other persons were present near the field of the appellant as the incident occurred in the field in a day time i.e. in between 11.00 a.m. to 1.30 p.m. but none of them saw the incident. Shri Ottalwar further contended that if a lady is strangled, she would cry which would receive the attention of the other persons, but nothing had happened and the entire case is concocted. It is also stated that between the appellant and deceased there was no immediate quarrel. So far as Savitri Bai's (daughter-in-

law of the appellant and deceased) matter is concerned, the same was an old affair.

7. Per contra Shri Agrawal, learned counsel appearing for the State supported the findings recorded by the trial Judge in the judgment and contended that the circumstances are clinching and have been proved.

8. In view of the rival contentions raised by learned counsel for the parties, we have carefully gone through the material on record. In this case, the evidence of P.W.2 Milaram is consistent. He has stated that he alongwith his father (appellant) and mother (deceased) had gone to the field at about 8.00 a.m. for agricultural work i.e. weeding. He has also stated that at 11.00 a.m. he was asked by the appellant to go to the house and prepare the food. P.W.2 Milaram came to the house and prepared the food and was waiting for his father and mother. When both of them did not return the house, P.W.2 went to the field where he found his mother dead and appellant father was missing. This witness has been cross-examined at length. There is nothing to discard the testimony of P.W.2 Milaram and his evidence is reliable.

9. P.W.8 Phoolkunwar (niece of the appellant) is another witness. She has stated that on the date of incident at about 1.30 p.m. the accused came to her house. She has further stated that at that time the accused had brought one *tokiny* and one empty bag (*bora*) and kept the same in her house. She has also stated that the accused demanded Rs.5/- from her, but she gave Rs.50/- because she did not have the change. The accused took Rs.50/- from her and stated that

he would return the balance. Thereafter he went and did not come. She told this to her brother Rishi. She has also stated that *tokiny* and bag (*bora*) were seized by the Police from her. There is nothing to discard her testimony.

10. There is another witness P.W.10 Rishi Kumar (nephew of the appellant). He has stated that on the date of incident at about 1.30 - 2.00 p.m. while he was going to his house for taking meals after the work from Kirana Shop, he met the accused near the pond. The accused was wearing Baniyan and Towel and demanded shirt from him as he is going to market to purchase Tea Leaves, Sugar etc. He gave his own shirt to the accused, which was worn by the accused. It was blue colour shirt. Then P.W.10 reached the house and found that his sister Phoolkunwar was weeping and she had stated that the accused kept *tokiny* and bag (*bora*) and demanded Rs.5/- but she gave Rs.50/- as she had no change of Rs.5/-. He has also stated that when he was sitting for taking meals, Milaram came and informed that Bhoja Bai died. In cross-examination, P.W.10 Rishi Kumar stated that the accused did not return.

11. In examination of the accused the question No.20 was put to the appellant about the evidence of Milaram. On this the answer of the appellant was yes. Then question No.25 was put to the appellant about the evidence given by Phoolkunwar. On this the appellant has admitted and said that he kept *tokiny* and bag (*bora*) in her house. The question No.28 was also put to the appellant about the evidence given by Rishi Kumar. On hearing this, the accused started weeping.

12. The evidence of P.W.2 Milaram, P.W.8 Phoolkunwar and P.W.10 Rishi Kumar go to show that they are the truthful witnesses. The evidence of these witnesses further go to show that the deceased was in the company of the accused. The evidence also show that accused asked his son Milaram to go to the house to prepare food and when both of them did not come, Milaram came to the field and found that his mother was lying dead and father (appellant) has left the spot. The evidence also show that the appellant went to the house of P.W.8 Phoolkunwar with *tokiny* and empty bag (*bora*) and Rs.50/- was taken by him, thereafter he met P.W.10 Rishi Kumar where he took shirt from him. All those circumstances were placed before him, which are practically admitted for and no explanation has been given. The injuries found on the deceased were homicidal in nature.

13. The contention of learned counsel appearing for the appellant is that some other persons could have seen the incident. The incident is hypothetical. The deceased and appellant are husband and wife. They were working in the field. The appellant has not disputed these facts and on the contrary he has admitted the same while replying to the questions at the time of examination under Section 313 of the Code of Criminal Procedure.

14. The Court below considered all these aspects and arrived at a finding that the appellant is the person who has killed his wife. We have also gone through the entire record and we do not find any infirmity in the judgment of conviction and sentence. So far as the offence is concerned, the injuries, which have been found on the body of the deceased, are on over chest, contusion over left auricle, multiple aberrations and on over right wrist anterior aspect. Under

(34)

7

the circumstances, we are of the considered opinion that the offence committed by the appellant falls under Section 302 of the Indian Penal Code. Accordingly, the appeal fails and is dismissed.

15. Before parting, we appreciate the valuable assistance rendered by Shri V.C. Ottalwar, Advocate appearing as amicus curiae on behalf of the appellant and Shri Ravindra Agrawal, learned counsel appearing for the State.

Sd/-
Fakhruddin
Judge
21-12-05

Sd/-
V.K. Shrivastava
Judge
21-12-05

Gowri